IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 20TH JUNE 2007 / 30TH JYAISHTA 1929

WP(C).No. 20369 of 2006(Y)

PETITIONER:

TOM THOMAS.P., MANAGER,
ST.THOMAS U.P.SCHOOL, PARANNUR,
THRISSUR DISTRICT, (S/O.LATE THOMAS,
AGED 59 YEARS, PULIKKOTTIL, CHOONDAL-680 502).

BY ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

RESPONDENTS:

1. THE STATE OF KERALA, REPRESENTED BY
THE SECRETARY TO GOVERNMENT, GENERAL EDUCATION
DEPARTMENT, SECRETARIAT, TRIVANDRUM.

2. THE DIRECTOR OF PUBLIC INSTRUCTION,
JAGATHY, TRIVANDRUM-14.

3. THE DEPUTY DIRECTOR OF EDUCATION,
AYYANTHOLE, THRISSUR DISTRICT.

4. THE ASSISTANT EDUCATIONAL OFFICER,
KUNNUMKULAM, THRISSUR DISTRICT.

BY ADV. MS. JEENA JOSEPH,ADV.COMMISSIONER
GOVERNMENT PLEADER SRI.T.T.MUHAMOOD

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HERAD ON 20/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

Ext.P1: True copy of the G.O.(Rt)No.55/72/S. Edn. Of the Government.

Ext.P2: True copy of the No.K.Dis.22308/77/G5 of the Regional Deputy Director of Public Instruction, Ernakulam.

Ext.P3: True copy of the document of the pre-KER.

Ext.P4: True copy of the order No.L.Dis. 21054/72/E5 of the Regional Deputy Director of Public Instruction.

Ext.P5: True copy of the order No.D.Dis.B/5368/74 of the 4th respondent.

Ext.P6: True copy of the order No.D.Dis.B/4843/77 of -do-

Ext.P7: True copy of the order No.D.Dis.B/1694/98 of -do-

Ext.P8: True copy of the order No.D.Dis.B/2220/99 of -do-

Ext.P9: True copy of the order No.D.Dis.B/2451/2000 of -do-

Ext.P10: True copy of the fitness certificate

Ext.P11: True copy of the order No.D.Dis.2034/2000/RA(2)/DPI of the 2nd respondent.

Ext.P12: True copy of the G.O(Rt)No.2842/02 G.Edn.of the Government.

Ext.P13: True copy of the review petition filed before the Government.

Ext.P14: True copy of the judgment in O.P.No.28311/2002-U of this Hon'ble court.

Ext.P15: True copy of the G.O(Rt)No.265/03/GE of Government.

Ext.P16: True copy of the judgment in O.P.No.4568/1972 of this Hon'ble court.

Ext.P17: True copy of the permanent register.

Ext.P18: True copy of the judgment in O.P.No.5639/2003 of this Hon'ble court.

Ext.P19: True copy of the covering letter of the petitioner.

Ext.P20: True copy of the order No. B-4292/04 of the 4th respondent.

Ext.P21: True copy of the letter of the petitioner.

Ext.P22: True copy of the order in Contempt Case(C)No.428/05.

Ext.P23: True copy of the letter of the petitioner.

Ext.P24: True copy of the order No.B-1077/2005/K. Dis. Of the 4th respondent.

Ext.P25: True copy of the visit report of the Dist. Edl. Officer, Chavakkad.

Ext.P26: True copy of the certificate.

Ext.P27: True copy of the revision petition filed before the government.

Ext.P28: True copy of the G.O.(Rt)No.2837/06/G.Edn. Of the Government.

// True copy //

P.A. To Judge

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A.K.BASHEER, J.

W.P.(C)No.20369 OF 2006

Dated this the 20th day of June, 2007

JUDGMENT

Petitioner is the manager of St. Thomas U.P. School, Parannur in Thrissur district, which is admittedly an aided institution.

2. Petitioner claims that it is a pre-K.E.R. School. According to him, 13 class divisions and adequate number of posts of teachers were sanctioned to the school in the academic year 1969-1970. He has pressed in to service Exts.P1 and P2 to show that in the academic year 1970-71, 15 divisions were sanctioned. As rightly contended by the petitioner, Ext.P2 shows that 15 divisions were sanctioned in the school during 1977-78. Exts.P3 to P10 would indicate that more than ten divisions were sanctioned in the school during the subsequent years.

3. It is on record that from 1999-2000 onwards petitioner had been clamouring for sanction of ten and more divisions. However, during the academic year 2005-2006 his claim was for 11th division. The request was turned down by the Controlling Officer. Later, the appellate authority as well as the revisional

authority confirmed the above order. It is in the above circumstances, petitioner has preferred this writ petition seeking appropriate reliefs. Petitioner also prays for issuance of a writ of mandamus or such other appropriate writ or direction to the respondents to grant 10th division for the academic year 1999-2000 and 11th division from 2005-2006 onwards in the school. The short, question that arises for consideration is whether the claim made by the petitioner is legally valid and sustainable.

4. At the outset, it may be mentioned that the Advocate Commissioner who was appointed by this court has, in her report, stated thus:

> "in short, I may report that in the pre KER building there are 9 sanctioned classes and there is one additional class working but awaiting approval from the competent authorities. However if the students are distributed in normal course, one more division can be accommodated in that vacant space at present. In addition to that two divisions of English medium are functioning in the post KER building. Therefore, I may add, two more divisions can be accommodated over and above the sanctioned classes in the pre KER building".

5. The departmental officers has filed objection to the

report of the Commission. But having perused the report and objection, I do not find any reason to discredit the report of the Advocate Commission for reasons more than one.

6. It is pertinent to note that the question whether the petitioner was entitled to get additional divisions in his school was considered by this court on an earlier occasion. Ext.P16 is a copy of the judgment rendered by this court in O.P.No.4568 of 1972. An observation made by the learned judge in the above judgment, which is eminently referable and relevant for a decision in the matter, is extracted hereunder:

> "If for the academic year 1970-71 the school buildings could accommodate 15 divisions as found by the first respondent State in Ext.P1, I fail to understand how the place became insufficient for accommodating an equal number of divisions for the school year 1972-73. I am also unable to understand how the second respondent, while passing Ext.P5 order, ignored Ext.P1. The respondents have no case that Ext.P1 order was at any time revised or that there is any change in circumstance like destruction of the portion of the building on the basis of which Ext.P1 order was passed"

7. As rightly noticed by his court in the above judgment, the department as on today does not have a case that any

portion of the building which did exist in the year 1970-1971 had been destroyed. Even in the objection filed against the Commission report there is not even a reference to such a situation. Therefore, I find no merit in the contention raised by the department that the petitioner is not entitled to claim a tenth division for the academic year 1999-2000. For the same reason, I repel the contention raised by the Department that petitioner is not entitled to get an additional 11th division for the academic year 2005-06. Another contention raised by the Department is that petitioner had not produced any document like pre-Ker register, staff fixation order for Pre-KER period etc. But Ext.P17 pre-KER register nullifies the above contention. More importantly the finding entered by this court in Ext.P16 judgment, in any view, is sufficient to repel the contentions raised by the Department. Further the report of the Advocate Commissioner cannot be brushed aside at all.

8. In the above facts and circumstances, I am satisfied that the writ petition is liable to be allowed. Exts.P12, P15, P24 and P28 are quashed.

Appropriate consequential orders shall be passed by respondent no.1 in the light of the observations made above as expeditiously as possible, at any rate, within one month from the date of receipt of a copy of this judgment.

A.K.BASHEER, JUDGE

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